

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 35-005-14-1-5-00054
Petitioners: Yvonne C. Hiles & Von, Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-136.400-005
Assessment Year: 2014

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2014 assessment appeal with the Huntington County Assessor on August 11, 2014.
2. On October 27, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on May 6, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on June 29, 2016. She did not inspect the property.
6. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The subject property is an unimproved residential lot located on Lindley Street in Huntington.
8. The PTABOA determined the total assessment is \$3,400.
9. The Form 131 claimed a total assessment of \$1,200.

¹ According to the letter initiating review at the local level, Yvonne C. Hiles and Von, Inc., each have "undivided one-half interest" in the subject property.

² Mr. Hiles signed the Form 131 as Vice President and Chief Operating Officer for Von Inc.

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Aerial photograph of the “flood zone.”

Respondent Exhibit 1: Form 131,

Respondent Exhibit 2: Notification of Final Assessment Determination (Form 115) dated October 27, 2014,

Respondent Exhibit 3: Petitioners’ letter initiating review at the local level dated August 8, 2014,

Respondent Exhibit 4: Subject property record card with aerial photograph,

Respondent Exhibit 5: Summary of the Respondent’s arguments,

Respondent Exhibit 6: Spreadsheet, property record cards, and sales disclosures for two vacant lots in Huntington,

Respondent Exhibit 7: Respondent’s closing statement.

Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Hearing notice dated May 6, 2016,

Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Objections

- 11. Mr. Hiles objected to Respondent’s Exhibit 6 arguing both sales occurred after the relevant timeframe for a March 1, 2014, assessment. In response, Ms. Newsome argued the first sale was utilized because it “occurred within 11 days of March 1, 2014.” She went on to argue that both sales “generally reflected the actions of buyers and sellers.” The ALJ took the objection under advisement.
- 12. Mr. Hiles objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules the objection and Respondent’s Exhibit 6 is admitted.

Contentions

- 13. Summary of the Petitioners’ case:

- a) The property’s assessment is too high. Roughly half of the lot is located in a “flood zone.” For this reason, “its use is restricted by the state and federal government.” As the use of this lot is restricted, it should not be assessed in the same fashion as “lots not located in a flood zone.” *Hiles argument; Pet’rs Ex. 1.*
 - b) There are no other lots in the “area” that are comparable to the subject property. However, “similar lots” sell for \$50 at tax sales. *Hiles argument.*
 - c) The Respondent’s sales data is flawed. The Respondent utilized purportedly comparable properties that are not comparable to the subject property. The lots utilized were purchased by adjacent property owners to support their existing properties. The property on Lindley Street sold at a higher amount because it also included a garage. Additionally, the properties utilized are not located in a “flood zone,” and the sales occurred after the relevant assessment date. *Hiles argument (referencing Resp’t Ex. 5, 6, 7).*
14. Summary of the Respondent’s case:
- a) The property is under-assessed. In an effort to prove this, the Respondent performed an analysis considering all three approaches to value. Accordingly, the sales-comparison approach provided the best indicator of value. In completing her analysis, she followed both the “Guidelines” and the Uniform Standards of Professional Appraisal Practice (USPAP) to analyze the comparable sales. *Newsome testimony; Resp’t Ex. 5.*
 - b) According to the Respondent’s “vacant land analysis,” she utilized two sales that occurred on March 11, 2014, and June 6, 2014, respectively. The average sale price equated \$0.55 per square foot. Currently, the subject property is assessed at \$0.39 per square foot. As such, the Respondent argues the total assessment should be increased from \$3,400 to \$4,000. *Newsome argument; Resp’t Ex. 6, 7.*

Burden of Proof

- 15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

17. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
18. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2013 to 2014. Further, the Petitioners failed to offer any argument the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners. The Respondent asked to have the assessment increased. It is her burden to prove that increase.

Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2014 assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. See Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, in an attempt to prove the property is incorrectly assessed, the Petitioners offered an aerial flood map of the neighborhood that appears to indicate the property is in a flood zone. While this fact is likely detrimental to the value, it does not establish that the assessment is in error. The Petitioners failed to offer anything to quantify actual effects of their claim and quantify a more accurate value. The Petitioners needed to offer probative evidence of a more accurate market value-in-use

as of the assessment date. Without more, the aerial flood map is not enough to make a prima facie case for changing the assessment.

- d) The Petitioners did not offer enough probative evidence to change the assessment. As such, the assessment will remain the same. The Respondent, however, sought an increase in the assessment. The Board will now turn to the Respondent's argument.
- e) The Respondent offered some market-based evidence to support her argument. Specifically, she pointed to the sales of two lots, one on Lindley Street and one on First Street. The Respondent essentially is relying on a sales-comparison approach to establish that the assessment should be increased. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also*, *Long*, 821 N.E.2d 466, 469.
- f) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) Here, the type of analysis required is lacking from the Respondent's case. The evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Moreover, the Respondent failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Additionally, the Board is unable to find any specific computation to support the \$4,000 value requested by the Respondent. Thus, the Respondent's sales-comparison analysis lacks probative value.

Conclusion

- 20. The Petitioners failed to make a prima facie case for reducing the assessment. Additionally, the Respondent, who sought to have the assessment increased, similarly failed to make a prima facie case.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment will not be changed.

ISSUED: September 27, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.